



**UNITED NATIONS APPEALS TRIBUNAL**  
**TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2024-UNAT-1418

**Paul Njoroge Ng'ang'a**  
**(Appellant)**

**v.**

**Secretary-General of the United Nations**  
**(Respondent)**

**JUDGMENT**

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Before:	Judge Gao Xiaoli, Presiding Judge Leslie F. Forbang Judge Abdelmohsen Sheha
Case No.:	2023-1793
Date of Decision:	22 March 2024
Date of Publication:	29 April 2024
Registrar:	Juliet E. Johnson

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Counsel for Appellant:	Self-represented
Counsel for Respondent:	Sylvia Schaefer

**JUDGE GAO XIAOLI, PRESIDING.**

1. Mr. Paul Njoroge Ng'ang'a (Mr. Ng'ang'a), a staff member of the United Nations Environment Programme (UNEP), contested the outcome of the reclassification process of his position (contested decision).
2. By Judgment No. UNDT/2023/013 (impugned Judgment),<sup>1</sup> the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) determined that Mr. Ng'ang'a's application was premature and thus not receivable because he had not exhausted the remedy set out in Administrative Instruction ST/AI/1998/9 (System for the classification of posts) by submitting an appeal of the reclassification decision.
3. Mr. Ng'ang'a lodged an appeal against the impugned Judgment with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).
4. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

**Facts and Procedure**

5. At the relevant time of events, Mr. Ng'ang'a was employed as a Team Assistant at the G-4 level in the UNEP Governance Affairs Office (GAO) at the United Nations Office at Nairobi (UNON), Kenya.
6. On 4 August 2009, the reclassification of two positions to the next higher level, including the G-4 position that Mr. Ng'ang'a encumbered, was formally requested through the Human Resources Management Service, UNON (HRMS/UNON). The other position was a position of Computer Information Systems Assistant, at the G-6 level, encumbered by Mr. John Njuguna Bernard (Mr. Bernard).<sup>2</sup>
7. On 26 May 2010, the Recruitment and Classification Section, HRMS/UNON informed the Administration by interoffice memorandum that the reclassification requests for both positions had been processed and that the positions were respectively classified as G-4 and G-6 positions. Consequently, both positions remained at the same level without any upward reclassification,

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<sup>1</sup> *Ng'ang'a v. Secretary-General of the United Nations*, Judgment No. UNDT/2023/013.

<sup>2</sup> Management evaluation response dated 24 October 2022. Mr. Bernard also filed an appeal before the UNAT that was decided during the 2024 Spring Session (Case No. 2023-1791).

effective on 1 June 2010. However, there is no record that Mr. Ng'ang'a was notified of the outcome of the reclassification process.<sup>3</sup>

8. On 17 November 2021, Mr. Ng'ang'a wrote to the Director, Corporate Service Division (CSD), expressing that he had not received the outcome of his request to reclassify his position. On the same date, Mr. Bernard also sent a memorandum to the Administration to the same effect.<sup>4</sup>

9. On 25 January 2022, Messrs. Ng'ang'a and Bernard sent a joint memorandum to the Administration inquiring on the progress of their respective requests.<sup>5</sup>

10. On 31 March 2022, the Acting Director, CSD, informed Mr. Ng'ang'a that "[t]he result of the review [was] that although the [position was] approved to be reclassified the exercise did not yield positive results as the G-4 position was declined as not having met the requirements of an upward reclassification". The matter was referred to the Director, GAO, "to review in light of the needs and resources of the Office and decide on the way forward".<sup>6</sup>

11. On 11 April 2022, Mr. Ng'ang'a sent a memorandum to the Acting Director, CSD, sharing observations and recommendations about alleged flaws in the reclassification process of his position. Mr. Ng'ang'a also indicated his intention to raise the matter with the UNDT.<sup>7</sup>

12. On 30 August 2022, the Director, CSD informed Messrs. Ng'ang'a and Bernard by memorandum that:<sup>8</sup>

...

2. Following on the review of your requests (...), the Director of [GAO] and the Chief of Human Resources agreed to complete the processing of the alleged outstanding requests and submit the cases & supporting documentation to UNON for review and consideration. You were duly informed and kept updated about the process (...).

3. (...) [N]ew documentary evidence has recently been provided to the Administration confirming that contrary to [its] previous assessment, the requests for reclassification of

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<sup>3</sup> *Ibid.* See also impugned Judgment, para. 6.

<sup>4</sup> Memorandum dated 17 November 2021 from Mr. Ng'ang'a to the Administration, Subject: Classification results.

<sup>5</sup> Memorandum dated 25 January 2022 from Messrs. Ng'ang'a and Bernard to the Administration, Subject: Progress of the HR Issue.

<sup>6</sup> Memorandum dated 31 March 2022 from the Administration to Messrs. Ng'ang'a and Bernard, Subject: Reclassification of Positions 30600275 and 30601214.

<sup>7</sup> Memorandum dated 11 April 2022 from Mr. Ng'ang'a to the Administration.

<sup>8</sup> Memorandum dated 30 August 2022 from the Administration to Messrs. Ng'ang'a and Bernard, Subject: Follow-up on reclassification of positions 30600275 and 30601214.

both positions were duly submitted and processed by UNON in May 2010. According to the official Classification Notice memo issued by the Recruitment and Classification Section at [the HMRS/UNON] dated 26 May 2010 (...), the classification of positions 30600275 and 30601214 were confirmed and the G-4 and the G-6 levels respectively effective on 1 June 2010. The Classification Notice memo was addressed to the Secretary of Governing Bodies.

4. It is unfortunate that the Administration did not have available a copy of the Classification Notice when responding to your requests on 31 March 2022. However, it is now confirmed that the requests for classification are not outstanding and were duly processed in May 2010 confirming that the classification of both positions should be maintained at the same level (G-4 and G-6 respectively). (...)

5. In light of the above, the whole matter of the processing of the reclassification's requests of positions 30600275 and 30601214 initiated by the Secretary of Governing Bodies in 2009 has been resolved and is considered moot.

6. On the way forward, kindly note that it is within the discretionary authority of the Director of [GAO] to assess whether the duties and responsibilities of the two positions have changed substantially and there are any merits to consider a reclassification of the positions in full accordance with the provisions in ST/AI/1998/9 (...), taking into consideration the current and future operational requirements of the Secretariat of Governing Bodies. You will be informed in due course of any further developments.

13. On 8 September 2022, Mr. Ng'ang'a was notified of the negative outcome of the reclassification process.<sup>9</sup>

14. On 28 September 2022, Mr. Ng'ang'a requested management evaluation of various decisions of the Administration, including the contested decision.<sup>10</sup>

15. On 24 October 2022, the Management Evaluation Unit (MEU) informed Mr. Ng'ang'a by letter that his management evaluation request was not receivable because "appeals of classification decisions are governed by (...) ST/AI/1998/9" and must be submitted within "60 days from the date on which the classification decision [is] received". The MEU further noted that "it does not review classification decisions given that there is a separate internal process for such matter" and that, pursuant to [Administrative Instruction] ST/AI/2018/7 (Technical bodies), (...) [Mr. Ng'ang'a was] (...) not required to request a management evaluation".<sup>11</sup>

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<sup>9</sup> Impugned Judgment, para. 6.

<sup>10</sup> Management evaluation request dated 28 September 2022.

<sup>11</sup> Management evaluation response dated 24 October 2022.

16. On 15 November 2022, Mr. Ng'ang'a filed an application with the Dispute Tribunal challenging the contested decision.

*Impugned Judgment*

17. On 2 March 2023, the Dispute Tribunal issued the impugned Judgment on receivability. The UNDT observed that “[w]here statutory provisions exist to provide internal remedies, it is proper that staff members should exhaust those remedies before resorting to litigation before the [Dispute] Tribunal”.<sup>12</sup> In the present case, the UNDT agreed with the Secretary-General’s argument that although Section 5 of ST/AI/1998/9 provides that “[t]he decision on the classification level of a post may be appealed”, “it is an internal remedy that is available to the Applicant, and one that must be exhausted before the jurisdiction of [the UNDT] is triggered”.<sup>13</sup>

18. The UNDT also observed that the MEU lacked authority to review the matter, as management evaluation is not “a remedy equivalent to that one provided in Section 5 of ST/AI/1998/9”.<sup>14</sup>

19. Therefore, the UNDT dismissed Mr. Ng'ang'a's application as premature because he had not exhausted the remedy provided in Section 5 of ST/AI/1998/9 by submitting an appeal of the reclassification decision.

*Procedures before the Appeals Tribunal*

20. On 16 March 2023, Mr. Ng'ang'a filed an appeal against the impugned Judgment with the Appeals Tribunal, to which the Secretary-General responded on 15 May 2023.

**Submissions**

**Mr. Ng'ang'a's Appeal**

21. Mr. Ng'ang'a requests the Appeals Tribunal to reverse the impugned Judgment and “to grant [him] compensation for the breach and violation of [his] rights equivalent to three years’ net base salary [as well as] (...) moral damages equivalent to six months’ net base salary”.<sup>15</sup>

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<sup>12</sup> Impugned Judgment, para. 9.

<sup>13</sup> *Ibid.*, para. 8.

<sup>14</sup> *Ibid.*, para. 10.

<sup>15</sup> Appeal form.

22. With regard to the impugned Judgment, Mr. Ng'ang'a submits that the Dispute Tribunal erred in fact and in law in dismissing his application.

23. First, Mr. Ng'ang'a submits that the UNDT failed to give him an opportunity to comment on the Secretary-General's reply.

24. Second, Mr. Ng'ang'a contends that the UNDT committed an error and violated Article 1 of the Dispute Tribunal Statute (UNDT Statute) by not conducting an oral hearing.

25. Third, Mr. Ng'ang'a argues that the UNDT failed to consider that he had not challenged the classification level of his position but rather the several "breach[es] or violations of [his] rights" in the reclassification process. In this regard, he further contends that paragraph 2.4 of ST/AI/1998/9 "guarantees the staff [member] the right to classification results as soon as the process is complete for him/her to make a determination over his career progress", while its paragraph 4.1 provides that "[c]lassification decisions shall become effective as of the first of the month following receipt of a classification request". In the present case, Mr. Ng'ang'a observes that the Administration never provided any reason for "withholding the results of the reclassification exercise". Therefore, he submits that the UNDT erred in law "by failing to realize that Section 5 of ST/AI/1998/9 could not provide relief" for such breaches of the reclassification process.

26. Fourth, with regard to Section 5 of ST/AI/1998/9 on "appeal of classification decisions", Mr. Ng'ang'a submits that the UNDT erred in concluding that he "must" file an appeal to contest the reclassification of his position, when that Section specifically indicates that the decision on the classification level "may" and not "must" be appealed. Mr. Ng'ang'a also contends that Section 5 of this Administrative Instruction "has no standards for classification of posts at the General Service category".

27. With regard to the applicable legal framework, Mr. Ng'ang'a also contends that the Secretary-General erroneously relied on Administrative Instruction ST/AI/1998/8 (Competitive examination for promotion to the Professional category of staff members from other categories) in his UNDT reply and that, therefore, the UNDT erred in law "by upholding results of a classification exercise subjected to the wrong law."<sup>16</sup>

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<sup>16</sup> UNDT reply, para. 14ii).

28. Last, Mr. Ng'ang'a argues that the UNDT failed to consider that the Administration, in its memorandum dated 30 August 2022, concluded that "the whole matter of the processing of the reclassification's requests (...) ha[d] been resolved and [was] considered moot".<sup>17</sup> In doing so, he submits that the Administration "closed all the avenues on [his] way in search of justice and (...) [had] been applying double standards by implying that [he] should have appealed on the basis of Sections 5 and 6 of ST/AI/1998/9 only when [he] moved to the Dispute Tribunal".

### **The Secretary-General's Answer**

29. The Secretary-General requests that the Appeals Tribunal dismiss the appeal in its entirety. Should the UNAT determine that the appeal is receivable, in whole or in part, the Secretary-General submits that "the appropriate remedy would be to remand the matter to the UNDT, pursuant to Article 2(4)(b) of the Appeals Tribunal Statute (the Statute)."<sup>18</sup>

30. The Secretary-General submits that the UNDT correctly found that Mr. Ng'ang'a's application was premature and, consequently, not receivable. In this regard, the Secretary-General observes that most of Mr. Ng'ang'a's arguments relate to the merits of the case, which do not establish an error on appeal. Therefore, the Secretary-General contends that these submissions fall outside the UNAT's jurisdiction and should be disregarded on this basis alone. Nevertheless, even if the Appeals Tribunal were to consider those arguments, the Secretary-General submits that they have no merit.

31. First, the Secretary-General submits that the applicable legal framework did not "by default" provide Mr. Ng'ang'a an opportunity to file comments to his UNDT reply. On the contrary, Mr. Ng'ang'a should have filed a motion for additional pleadings, but he failed to do so.

32. Second, the Secretary-General contends that, pursuant to Article 7(2)(e) of the UNDT Statute and Article 16(1) of the Dispute Tribunal Rules of Procedure (UNDT Rules), an oral hearing before the UNDT was not mandatory.

33. Third, the Secretary-General argues that the UNDT correctly identified the contested administrative decision to be the outcome of the reclassification process of Mr. Ng'ang'a's position, a decision he himself referred to in his management evaluation request dated

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<sup>17</sup> Memorandum dated 30 August 2022 from the Administration to Messrs. Ng'ang'a and Bernard, Subject: Follow-up on reclassification of positions 30600275 and 30601214.

<sup>18</sup> Answer form.

28 September 2022.<sup>19</sup> The Secretary-General observes that the UNDT has the inherent power to define the contested decision because, as a first instance tribunal, it “is in the best position to decide what is appropriate for the fair and expeditious disposal of a case” and that the Appeals Tribunal should “not interfere lightly” with the UNDT’s broad discretion in the management of its cases.<sup>20</sup>

34. With regard to Mr. Ng’ang’a’s reference to several breaches in the reclassification process and, particularly, his reference to paragraph 2.4 of ST/AI/1998/9, the Secretary-General notes that the UNDT’s non-consideration of that matter, which pertains to the merits of the case, cannot constitute a reversible error in the appeal on receivability. In any event, the Secretary-General contends that Mr. Ng’ang’a should have appealed the reclassification process following the procedure set out in ST/AI/1998/9. Indeed, the Secretary-General highlights that Section 5 of this Administrative Instruction specifically provides that the appeal procedure applies in cases where “the classification standards were *incorrectly* applied, resulting in the classification of the post at the wrong level”.<sup>21</sup>

35. Fourth, the Secretary-General submits that Mr. Ng’ang’a’s argument that appeal of a decision on the classification level is not mandatory because Section 5 of ST/AI/1998/9 uses the word “may” and not “must” is misguided. Indeed, the Secretary-General observes that the use of the word “may” does not mean that the appeal procedure is not mandatory but only “indicates that a decision on a classification level of a post can be appealed (i.e., ‘may be appealed’) if a staff member decides to do so”. Moreover, the Secretary-General notes that when reading Section 5 of ST/AI/1998/9 alongside with its paragraph 6.1, which provides that “[a]ppeals shall be submitted in writing”, it becomes “evident” that the appeal procedure is mandatory.

36. Therefore, the Secretary-General contends that it was clear that Mr. Ng’ang’a had to first exhaust the remedies for appeal set forth in ST/AI/1998/9 before he could appeal the contested decision before the UNDT, but he failed to do so.<sup>22</sup> The Secretary-General further submits that Mr. Ng’ang’a also failed to submit an appeal within 60 days from the date on which he received the reclassification decision, as required by paragraph 6.3 of ST/AI/1998/9, despite the fact that “the MEU had alerted him to the applicable appeals process and the 60-day deadline therein”.

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<sup>19</sup> Management evaluation request dated 28 September 2022.

<sup>20</sup> *Nouinou v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-981, para. 48; *Bastet v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-423, para. 14; *Khambatta v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-252, para. 15.

<sup>21</sup> Emphasis added.

<sup>22</sup> *Edward E. Hammond v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1142, paras. 51 and 54.



Consequently, relying on Appeals Tribunal jurisprudence, the Secretary-General contends that tribunals “should not interfere with matters that fall within the Administration’s prerogatives, including its lawful internal processes, and that the Administration must be left to conduct these processes in full and to finality”.<sup>23</sup>

37. The Secretary-General also argues that contrary to Mr. Ng’ang’a’s submission, ST/AI/1998/9 specifically refers and applies to the General Service positions and that the reference to ST/AI/1998/8 in his UNDT reply was clearly a typographical error.<sup>24</sup>

38. Fifth, the Secretary-General submits that Mr. Ng’ang’a’s argument, asserting that the Administration’s memorandum dated 30 August 2022 “closed all the avenues on [his] way in search of justice and (...) had been applying double standards by implying that [he] should have appealed on the basis of Sections 5 and 6 of ST/AI/1998/9 only when [he] moved to the Dispute Tribunal”, is misguided and has “no bearing on the correctness” of the impugned Judgment on receivability. In any event, despite the wording of the Administration’s memorandum dated 30 August 2022, the Secretary-General observes that Mr. Ng’ang’a still had to follow the appeal procedure set out in ST/AI/1998/9 and it was not the “Administration’s responsibility to tell [him] when and how to appeal”. Indeed, the Secretary-General emphasizes that “[i]t is the staff member’s responsibility to ensure that he or she is aware of the applicable procedure in the context of the administration of justice at the United Nations”.

39. Sixth, with regard to Annexes 4 and 23 of the appeal, namely a chronology of events dated 28 September 2022 and a memorandum dated 6 May 2003 together with a reclassification notice dated 5 May 2003, the Secretary-General notes that Mr. Ng’ang’a did not make a request to have them admitted as additional evidence.<sup>25</sup> Therefore, he failed to address whether there were any exceptional circumstances to permit the introduction of such additional evidence and if it would be in the interest of justice and the efficient and expeditious resolution of the proceedings to admit it.<sup>26</sup> In any event, the Secretary-General argues that this additional evidence “is not relevant to the issue of receivability on appeal”.

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<sup>23</sup> *Nguyen-Kropp & Postica v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-509, para. 32.

<sup>24</sup> UNDT reply, para. 14ii).

<sup>25</sup> Chronology of events dated 28 September 2022 and Reclassification notice dated 5 May 2003 and reclassification notice dated 5 May 2003.

<sup>26</sup> Article 2(5) of the Statute.

40. Last, the Secretary-General submits that, in the absence of any error by the UNDT, the reliefs sought by Mr. Ng'ang'a have no legal basis and his request for remedies must be dismissed.

### **Considerations**

*Did the UNDT err in failing to give Mr. Ng'ang'a an opportunity to comment on the Secretary-General's reply or in not holding an oral hearing prior to issuing the impugned Judgment?*

41. Mr. Ng'ang'a submits that the UNDT failed to give him an opportunity to comment on the Secretary-General's reply. However, we do not see any error on the part of the UNDT. On 15 November 2022, Mr. Ng'ang'a filed his application before the UNDT. On 19 December 2022, the Secretary-General filed his reply. On 2 March 2023, the UNDT delivered the impugned Judgment on receivability. To be able to submit his comments on the Secretary-General's reply, Mr. Ng'ang'a should have filed a motion for additional pleadings. It is not the role of the UNDT to assist the parties in their pleadings.

42. Mr. Ng'ang'a also contends that the UNDT committed an error and violated Article 1 of the UNDT Statute by not conducting an oral hearing. Mr. Ng'ang'a's reference to this Article is misguided.

43. Article 16 of the UNDT Rules provides, in relevant parts:

1. The judge hearing a case may hold oral hearings.
  2. A hearing shall normally be held following an appeal against an administrative decision imposing a disciplinary measure.
- (...)

44. Further, Article 19 of the UNDT Rules provides:

The Dispute Tribunal may at any time, either on an application of a party or on its own initiative, issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties.

45. An oral hearing before the UNDT is not mandatory. Indeed, we have consistently emphasized that, "as a court of first instance, the UNDT is in the best position to decide what is appropriate for the fair and expeditious disposal of a case and do justice to the parties. Therefore, the Appeals Tribunal should not interfere lightly with the broad discretion of the UNDT in the

management of cases”.<sup>27</sup> In the present case, after a careful review of both parties’ submissions, we find that the UNDT correctly decided to issue a Judgment without holding an oral hearing, especially as the issue for consideration was one of receivability.

46. Hence, we cannot agree with Mr. Ng’ang’a that the UNDT erred in failing to give him an opportunity to comment on the Secretary-General’s reply or in not holding an oral hearing prior to issuing the impugned Judgment.

*Did the UNDT err in finding that Mr. Ng’ang’a’s application was premature and thus not receivable because he had not exhausted the remedy set out in ST/AI/1998/9 by submitting an appeal of the reclassification decision?*

47. In the present case, in his application filed before the UNDT, Mr. Ng’ang’a described the contested decision as “a pending reclassification of [his] post which was approved in 2009 whose alleged results were first communicated to [him] in March 2022 and again in August 2022”. However, before the Appeals Tribunal, Mr. Ng’ang’a submits that the UNDT failed to consider that he had not challenged the classification level of his position but rather the several “breach[es] or violations of [his] rights” in the reclassification process. We find that Mr. Ng’ang’a’s argument has no factual support but rather constitutes an attempt to prevent an adverse judgment.

48. In this regard, we have previously held that:<sup>28</sup>

(...) It is the role of the Dispute Tribunal to adequately interpret and comprehend the application submitted by the moving party, whatever name the party attaches to the document, as the judgment must necessarily refer to the scope of the parties’ contentions. Thus, the Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review.

49. Therefore, given the facts and grounds for contesting the administrative decision detailed in Mr. Ng’ang’a’s application, we conclude that the UNDT correctly identified that he was challenging the Administration’s decision regarding the reclassification of his position.

50. ST/AI/1998/9 sets out the procedure for classification or reclassification of a post. Its relevant Sections provide:

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<sup>27</sup> *Nouinou* Judgment, *op. cit.*, paras. 47-48.

<sup>28</sup> *Fasanella v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-765, para. 20.

Section 5

Appeal of classification decisions

The decision on the classification level of a post may be appealed by the head of the organizational unit in which the post is located, and/or the incumbent of the post at the time of its classification, on the ground that the classification standards were incorrectly applied, resulting in the classification of the post at the wrong level.

...

Section 6

Appeal procedure

6.1 Appeals shall be submitted in writing to:

...

(b) The respective head of office in the case of posts in the General Service and related categories administered by ECA, ECLAC, ESCAP, ESCWA, the United Nations Office at Geneva, the [UNON] and the United Nations Office at Vienna, up to and including posts at the G-7 level, except where the appeal involves a request for reclassification of such a post to the Professional category.

...

6.3 Appeals must be submitted within 60 days from the date on which the classification decision is received.

...

6.6 If it is decided to maintain the original classification or to classify the post at a lower level than that claimed by the appellant, the appeal, together with the report of the reviewing service or section, shall be referred to the appropriate Classification Appeals Committee established in accordance with the provisions of section 7 below.

...

6.14 The Assistant Secretary-General for Human Resources Management or the head of office, as appropriate, shall take the final decision on the appeal. A copy of the final decision shall be communicated promptly to the appellant, together with a copy of the report of the Appeals Committee. Any further recourse against the decision shall be submitted to the United Nations Administrative Tribunal.

51. For a proper understanding of the word “may” in Section 5, we must consider the context in which it is used. “May” here aims to clarify that both “the head of the organizational unit in which the post is located” and “the incumbent of the post at the time of its classification” may appeal the decision on the classification level of a post. Read with Section 6, in which “shall” and “must” are clearly expressed (i.e., “appeals *shall* be submitted in writing to (...)” and “appeals *must* be submitted within 60 days from the date on which the classification decision is received”), we find that the appeal procedure is a mandatory internal administrative appeal mechanism that staff members have to follow before contesting such decision before

the Dispute Tribunal.<sup>29</sup> In other words, the decision to appeal an administrative decision on reclassification is optional as seen in the use of the word “may”. However, should a staff member decide to exercise the right to appeal, the nature of such appeal must be as laid down in Section 6 of ST/AI/1998/9.

52. In this regard, in *Edward E. Hammond*, we held that:<sup>30</sup>

(...) Even assuming, in Mr. Hammond’s favor, that he may appeal a reclassification decision under ST/AI/1998/9 even when it is taken by the General Assembly, the application is not receivable because Mr. Hammond has not followed Sections 5 and 6 of ST/AI/1998/9 (...)

(...) It becomes clear from Section 6.14 that the final decision on the reclassification issue (even if originally dealt with by the General Assembly)(...) is taken by the Assistant Secretary-General for Human Resources Management, and it thus constitutes an administrative decision, which is open to review under Article 2(1)(a) of the UNDT Statute. The mechanism under Sections 5 and 6 of ST/AI/1998/9 implements or transforms the original General Assembly decision into an administrative decision, and the Tribunals then has authority to review it.

(...) In the present case, Mr. Hammond did not follow the provisions of Sections 5 and 6 of ST/AI/1998/9. He was notified of the General Assembly’s 24 December 2017 decision on 8 January 2018, when UNAMID informed him, by e-mail, that the General Assembly had approved the reclassification of his post to the FS-6 level. (...)

(...) However, Mr. Hammond did not submit an appeal under Section 6 of ST/AI/1998/9 within 60 days from that date. Consequently, there was no final (administrative) decision on the matter. (...)

53. We also highlight that paragraph 51 of General Assembly resolution 62/228, adopted on 22 December 2007, reaffirms the “importance of the general principle of exhausting administrative remedies before formal proceedings are instituted”.

54. According to the present case record, UNON finalized the reclassification process for Mr. Ng’ang’a’s position in line with the procedure set out in ST/AI/1998/9. Mr. Ng’ang’a was notified of the negative outcome of the reclassification process on 8 September 2022. However, he did not file an appeal of the outcome of this reclassification process to the administrative authority as required by ST/AI/1998/9 and, thus, did not exhaust the administrative remedies

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<sup>29</sup> Emphasis added.

<sup>30</sup> *Edward E. Hammond* Judgment, *op. cit.*, paras. 51-54.

before initiating formal proceedings before the UNDT. Consequently, the Dispute Tribunal correctly found his application not receivable because it was premature.

55. Turning to Mr. Ng'ang'a's claims that the UNDT erred in law "by failing to realize that Section 5 of ST/AI/1998/9 could not provide relief" for his alleged breaches of the reclassification process, that Section 5 of this Administrative Instruction "has no standards for classification of posts at the General Service category" or that the Administration "closed all the avenues on [his] way in search of justice and (...) [had] been applying double standards by implying that [he] should have appealed on the basis of Sections 5 and 6 of ST/AI/1998/9 only when [he] moved to the Dispute Tribunal", we find that they have no merit and constitute a misunderstanding of this Administrative Instruction.

56. With regard to the Secretary-General's reference to ST/AI/1998/8 in the first instance procedure, it was obviously a typographical error. Mr. Ng'ang'a did not demonstrate that the UNDT erred in law "by upholding results of a classification exercise subjected to the wrong law".

57. Therefore, the UNDT did not err in finding that Mr. Ng'ang'a's application was premature and thus not receivable because he had not exhausted the remedy set out in ST/AI/1998/9 by submitting an appeal of the reclassification decision.

58. Since Mr. Ng'ang'a's application is not receivable, all his submissions and additional evidence concerning the merits of the case cannot be considered by this Tribunal.

**Judgment**

59. Mr. Ng'ang'a's appeal is dismissed, and Judgment No. UNDT/2023/013 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 22<sup>nd</sup> day of March 2024 in New York, United States.

*(Signed)*

Judge Gao, Presiding

*(Signed)*

Judge Forbang

*(Signed)*

Judge Sheha

Judgment published and entered into the Register on this 29<sup>th</sup> day of April 2024 in New York, United States.

*(Signed)*

Juliet E. Johnson, Registrar